

**BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

In the matter of)	
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)	
COMPUTER)	
RESERVATION SYSTEMS (CRS))	DOCKET OST-97-2881
REGULATIONS)	DOCKET OST-97-3014
)	DOCKET OST-98-4775
)	

**COMMENTS OF
AMERICAN EXPRESS TRAVEL
RELATED SERVICES COMPANY, INC.**

Communications with respect to this document should be addressed to:

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September 21, 2000

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Thomas Ray
Office of the General Counsel
U.S. Department of Transportation
400 Seventh Street
Washington, DC 20590

Re: Computer Reservation System (CRS) Regulation
Docket Nos. OST-97-2881, OST-97-3014 and OST-98-4775

Dear Mr. Ray:

American Express Travel Related Services Company, Inc. ("Amex") hereby provides comments in connection with the Department's request for supplemental comments in its re-examination of rules governing CRSs, 14 CFR Part 255 (the "CRS Rules") (OST-97-2881). On April 12, 2000, Amex submitted comments seeking an expedited review of 1) Section 255.10 which empowers CRS vendors to distribute sales and marketing data in violation of travelers' privacy and 2) availability of fares on airline-owned Web sites. These comments are attached and we once again urge you to address the serious privacy and antitrust concerns raised by Section 255.10. We submit further comments on the Internet issues below.

We would like to reiterate our earlier comment that the CRS Rules should be extended to airline-owned Web sites, in particular ones that display schedule and fare information of more than one airline, such as Orbitz. As you note in your request, "to adopt a rule, we must consider whether the practice at issue harms consumers by significantly reducing competition or potentially causing deception and whether market forces (or alternative less restrictive rules) may correct the perceived problem." Fed. Reg., Vol. 65, No. 142, p 45556. Leaving airline-owned Web sites unregulated harms consumers in these ways and more.

An airline owned Web site such as Orbitz is no different than a traditional CRS, only the technology has changed. The CRS Rules were created to correct unfair, deceptive, anticompetitive practices by airline owners. If a purportedly unbiased reservation Web site is owned by one or more airlines¹, motivated to sell more of their seats than those of non-owner airlines, there is an inherent conflict of interest and the same potential for deception and anticompetitive abuses as existed in the past with the CRSs. Prohibitions on charging discriminatory participation fees, prohibitions on display bias, mandatory posting of fares in competitive reservation systems, fair practices with respect to travel agents: these are all regulations that make sense for any airline-owned computer reservation system, including airline-owned Web sites. The airlines may argue that these Web sites use a CRS and thus are adequately regulated, but this is disingenuous. Orbitz has clearly stated that all participating airlines will post “Internet only fares”; fares which are not available anywhere else. What is to prevent them from using these fares for predatory pricing, price signaling, keeping new entrants out of the market and other anticompetitive activities? The only way to ensure the prevention of unfair, predatory and anticompetitive practices is to regulate these Web sites under the CRS Rules.

We agree with the DOT Inspector General’s recommendation that if an airline posts a fare on a Web site in which it has an ownership interest, such as Orbitz, the airline must also post the fare on other reservation systems². Indeed, we even like the notion of

¹ We are particularly concerned by Web sites owned by more than one airline, such as Orbitz and Hotwire, and the possibility for anticompetitive activity that they present. See our comments of April 12, 2000.

² Testimony of Kenneth Mead to the Senate Commerce, Science and Transportation Committee Hearing on July 20, 2000.

an “Obligated Carrier” contained in Canada’s CRS Regulations³. To ensure consumers have complete and accurate airline information, Canada regulates not only the system participation of airlines that own systems but also of the countries’ largest carriers, requiring them to provide complete, accurate and up to date information about their fares and schedules and to participate in reservation systems in a nondiscriminatory manner (subject, of course, to reasonable fees being charged by the systems). Air service in the United States has evolved into geographic fortress hubs with the six major carriers enjoying a virtual monopoly on many routes⁴. If any one of these carriers were arbitrarily to withhold information about its schedules and fares, consumers would be seriously impacted. At a minimum, though, if an airline posts a fare on its proprietary Web site it should post the fare in competing systems.

If you leave airline-owned Web sites unregulated, not only will you harm consumers by creating an arena where consumers can be deceived and anticompetitive activity can flourish, but you will also harm consumers who do not have meaningful access to the Internet. The vast majority of those on the wrong side of the digital divide, (senior citizens, minorities and low-income individuals)⁵, rely on travel agents, who use traditional CRSs, to arrange their travel. These populations will be cut off from the lowest fares if airlines are allowed to post “Internet only fares” on their Web sites without

³ Regulations to the Aeronautics Act, SOR/95-275. Also available at <http://canada.justice.gc.ca/FTP/EN/Regs/Chap/A/A-2/SOR95-275.txt>

⁴ We recently commissioned an analysis of the relationship between the market concentration of airlines and the cost per mile for airfares. We focused on short haul routes where one would expect more competition from regional carriers. Of the 88 routes under 700 miles that we looked at, 31 had one airline that flew over 67% of the flights and on an additional 17 routes, 2 airlines accounted for over 80% of the flights. Thus, over 50% of the most traveled short haul business routes have little or no competition.

⁵ See National Telecommunications and Information Administration, U.S. Department of Commerce, Falling through the Net: Defining the Digital Divide: A Report on the Telecommunications and Information Technology Gap in America (July 1999) <http://www.ntia.doc.gov/ntiahome/fttn99/FTTN.pdf> (Exhibit 3).

posting them in competing systems (traditional CRSs) used by travel agents. Travel agent access to “Internet only fares” is essential to prevent consumer harm.

The Rules do not need to be extended to non-airline-owned Web sites such as Travelocity and Expedia, which are merely online versions of the independent travel agent. It is the element of airline ownership that creates a conflict of interest that has in the past led to, and could in the future lead to, anticompetitive abuse. In contrast, independent travel agents compete aggressively with one another to distribute the services of the airlines. They function as the honest broker that brings full, unbiased information to the consumer about competing flights, fares, airport departure and arrival options, special promotions etc. While on-line (and off-line) travel agents do enter into marketing agreements to promote the various airlines, these are controlled by market forces. If a travel agent (either on-line or off-line) does not deliver the lowest airfares and most convenient routing, they will lose their customers to their competitors. There are numerous non-airline-owned Web sites (e.g. Lowestfare.com, Cheaptickets.com, biztravel.com, ByeByeNow.com) and more being created each day. As long as these Web sites (and all travel agents) are assured of receiving full and fair access to schedules and fares, competition and new innovations that benefit consumers will flourish.

To be clear, we do believe that the Rules should continue, for the immediate future, to govern non-airline-owned CRSs. Airlines created the CRSs and then locked travel agents into using them with long term contracts. Travel agents distribute the majority (70-80%) of air tickets in the United States and all agents use one of the four main CRSs. The fact that the airlines are beginning to divest their ownership of the CRSs does not affect the travel agents’ dependence on them. With the exception of Section

255.10, the CRS Rules do a good job of ensuring these systems are operated in a fair and equitable manner and provide complete and accurate information on public fares to the traveling public. Unless and until these systems are replaced by technology that enables travel agents and consumers to access broad-based schedule and fare information by direct connections to airline systems, the CRS Rules should continue to apply to all CRSs, even those not owned by airlines. We suggest continuing the application of the CRS Rules to non-airline owned CRSs for several years and then re-reviewing the issue.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Wynn", with a long horizontal flourish extending to the right.

Sarah Wynn
Group Counsel
General Counsel's Office
American Express Travel Related Services
Company, Inc.



April 12, 2000

Thomas Ray
Office of the General Counsel
U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, DC 20590

American Express
General Counsel's Office
World Financial Center
New York, NY 10285-4900

Re: Computer Reservations System Regulations

Dear Mr. Ray:

American Express Travel Related Services Company, Inc. ("Amex") hereby provides comments in connection with the Department's extension of the Computer Reservations Systems (CRS) Regulations 14 CFR Part 255 (the "CRS Rules") while the Department carries out its reexamination of the CRS Rules (OST-97-2881).

We agree that extension of the CRS Rules was preferable to terminating them. Although the Rules have limited applicability in their current state as carriers spin off the systems, the Rules do have merit for the remaining carrier owned systems. However, Amex believes the Department should conduct an expedited review of two very important issues: 1) provision of marketing data pursuant to Section 255.10 of the CRS Rules, and 2) availability of fares posted on carrier-owned internet websites.

I. Marketing Data

Amex concurs with American Society of Travel Agents ("ASTA"), OST-2000-6984-5, that the Department should expedite its review of Section 255.10. This Section, which directs carrier-owned CRS vendors ("CRSs") to provide sales and marketing data to all airlines, should be terminated at the earliest possible date. We made this point in our original comments filed in December 1997, OST-97-2881-33, but technology has advanced to such a degree since then that termination of this Section is now critical.

When Section 255.10 was enacted, CRSs could only produce historical data, typically 60-90 days post flight, which the airlines would use for trend analysis and other acceptable purposes. Since then, technology has progressed to the point that today CRSs are producing and making available real time data. An airline can, thus, obtain up to the minute analysis of competitors' sales, market share and customer information, even on a *pre-flight* basis. A carrier, so disposed, is able to use this real time (and advance) data for predatory pricing, blocking new entrants from the marketplace, signaling and other anticompetitive activity. What began as a tool to promote competition has become a weapon to eliminate it.

We also want to bring to your attention the tension between Section 255.10 and the consumer privacy provisions of the recently enacted Gramm-Leach-Bliley Act, Pub. L. 106-102 (the “GLB Act”). Regulations implementing this Act are still in draft form, but the Act clearly applies to certain travel agencies, and mandates that such travel agencies and any third party that receives “non-public personal information” from an agency, take certain actions to maintain the privacy of the information. Section 255.10, thus, is directly contrary to the GLB Act.

The Department must take steps to ensure that technological advances that are rapidly changing the landscape of travel distribution are not used for anticompetitive purposes and do not threaten consumers’ privacy. We urge you to terminate Section 255.10. But at a minimum, the Department should put restrictions on the data distributed pursuant to Section 255.10: Data distribution should be limited strictly to prohibit provision of data that is less than 30 –60 days post flight, and then, to ensure that all customer-identifying information, including passenger name, place of employment, frequent flier numbers, ticketing agent name or ARC/IATA number, is excluded from distribution.

II. Availability of Internet Fares

We also ask the Department to review, on an expedited basis, the availability of all fares, including low Internet fares, on CRS systems. Again, we made this comment in our original comments filed in 1997, but advances in technology and the proliferation of the Internet have brought the issue to the forefront. Eighty percent of all air tickets are issued by travel agents, yet agents cannot provide their clients with these low fares.

It has long been the Department’s policy to deter discriminatory offerings to various segments of the public. By denying CRSs access to Internet fares the airlines are discriminating against those consumers who lack meaningful web access or who choose not to purchase travel over the Internet. In 1999, only 3% of travel sales were made online. People who are economically disadvantaged, senior citizens and new immigrants are disproportionately affected by limiting availability of lower fares to the Internet. The only reasonable alternative is to mandate that any carrier that posts a fare on an airline-owned website make the fare available to travel agents via the CRS.

Airlines that created the computer reservation system and airline-owned CRSs have locked in travel agents (regular and electronic) with long term contracts. Agents cannot simply switch to web-based bookings because the CRS contracts have dramatic financial consequences if minimum segment requirements are not met. Airlines have created a distribution structure and cannot now undermine that structure without significant consumer harm.

Even more disturbing is the newly announced joint website (known as "T2"), owned by four major airlines with, at last count, 23 other participating carriers. The airlines have publicly stated that they will post their lowest fares on this site. Agents will not have access to these fares. We believe the T2 website is anticompetitive. It has long been known that the airlines do not want to deal with travel agents because they do not want to pay agency commissions and the airlines do not appreciate the agencies' honest-brokering (i.e., identifying the best deal for the customer). Airlines offering low internet fares on their individual websites is one tactic to drive customers away from agents. With T2, the airlines have gone one step further and agreed, through the strawmen of the website and Boston Consulting Group, that no airline will make their lowest fares available outside of T2 or their own websites. The use of these strawmen, however, does not make the agreement any less anticompetitive. This agreement is illegal under Section 1 of the Sherman Act, 15 U.S.C. § 1. See, e.g., Klor's Inc. v. Broadway-Hale Stores, Inc., 359 U.S. 207 (1959) (agreement among manufacturers of appliances and their distributors, through a retail store, that the manufacturers and distributors would not sell their products to competing retail store is per se illegal). The harm resulting from this conspiracy is borne by more than travel agents. As described above, consumers without Internet access will not be able to obtain these special fares and ultimately all consumers will have difficulty purchasing airline tickets and will likely pay higher prices once travel agencies are driven out of business.

In T2 the airlines are creating an Internet version of the CRS system, but one that allows them to completely avoid all the provisions of the CRS Rules, rules which were designed "to prevent unfair, deceptive, predatory, and anticompetitive practices in air transportation." The reasons for adopting the CRS rules are no less compelling today than they were in 1984, or in 1992 when the rules were revised in their current form. We urge the Department to ensure that the airlines are not able to bypass the rules by creating a successor electronic distribution system that falls outside the technical letter of the law. Again, any fare listed on any carrier owned website should be available to traditional or online travel agents via the established CRS. Only then will the public have meaningful access to airfares through a neutral distributor.

Thank you for your consideration.

Sincerely yours,



Sarah Wynn
Group Counsel